S.B. CIVIL WRIT PETITION NO.1192/1998

21.9.2006

HON'BLE MR. JUSTICE DALIP SINGH

Shri O.P. Jhajhariya for the petitioner.
Shri B.K. Sharma, Deputy Government Advocate.

The petitioner in this writ petition has prayed for quashing and setting aside the impugned order Annexure-7dated 19.2.1998. By the said order the respondent No.2 was selected and appointed as Notary Public under the Notaries Act, 1952 and the rules 1956 framed thereunder.

The submission of the learned counsel for the petitioner is that the respondent No.1 published a notification Annexure-1dated 21.6.1997 and invited the applications from the eligible persons for the appointment as Notary in Rajgarh, District Churu. It is contended that in pursuance of the aforesaid notification 10 advocates had submitted their applications. The case of the petitioner is that all the applications which were received in pursuance of the notification inviting applications on 21.6.1997 were rejected by the respondent No.1 and respondent No.1 invited fresh applications under the notification dated 12.12.1997.

It is submitted that in pursuance of the notification dated 12.12.1997 8 applicants out of the previous ten applicants who had submitted their applications in pursuance of the notification dated 21.6.1997 had again applied and the petitioner who had not applied earlier for the appointment as Notary in pursuance of the notification dated 21.6.1997 also submitted a fresh application. The petitioner's case is that in accordance with rule 6 of the Notaries Rules 1956 framed under Section 15 of the

Notaries Act 1952 no applicant shall be eligible who submit his application within 6 months of the rejection of the application for appointment as Notary. Rules of the Notaries Rules 1956 reads as under :-

> "6. Preliminary action on application._ (1) The competent authority shall examine every application received by him and, if he is satisfied that the applicant does not possess the qualifications specified in rule 3, or that any previous application of the applicant for appointment as a notary was rejected within six months before the date of the application, shall reject it and inform the applicant accordingly.
>
> (2) xxx xxx"

Based upon the aforesaid rules it was submitted that the respondent No.2 who was selected and appointed by the respondent No.1 who had earlier submitted his application in pursuance of the notification dated 21.6.1997 was not eligible to submit his application for appointment in pursuance of the notification dated 12.12.1997 as the period of six months has not elapsed since the rejection of the application submitted in pursuance of the notification dated 21.6.1997.

The respondents on the other hand have submitted that after the notification Annexure-1 dated 21.6.1997 was issued for inviting applications for appointment as Notary the objections were filed by one Shri O.P. Sihag and it was pointed out that the applications had been invited under the un-amended provisions of the rules of 1956 and that the act and the rules stood amended by the Amendment Act 1997 and therefore the process of selection if continued the the same would be in contravention of the provisions of the rules which has been amended in the year 1997. The reply filed by the respondent No.1 in this behalf may be reproduced as under :-

> "Upon consideration of the objections submitted by Shri O.P. Siyag, the

> Government on 12.12.1997informed all the applicants that due to the amendment in the rules, their previous applications were not liable to be accepted and acted upon and, therefore,they were also informed that a new notification was being issued for appointment on the post of Notary at Rajgarh in District Churu. In response thereto, they could submit new memorial. Copy of the said letter dated 12.12.1997 addressed to all the applicants as also the new notification have already been placed on record by the petitioner as Annexures-3 and 4."

A letter which was sent by the respondents has been filed as Annexure-3. It would be worthwhile to quote the same as this was sent to all the applicants also had applied in pursuance of the notification Annexure-1 dated 21.6.1997. The said letter Annexure-3 reads as under :

> "उपरोक्त विषय में निर्देशानुसार लेख है कि आपके द्वारा पूर्व पर्व प्रस्तुत मेमोरियलों पर केन्द्रीय सरकार द्वारा नोटेरी रूल्स में किये गये संशोधनों जिसके अनुसार नोटरी के आवेदनों की पात्रता में वृद्धि की गई है तथा मेमोरियलों का प्रारूप भी बदल दिया गया है । इस कारण आपका पूर्व आवेदन (मेमोरियल) स्वीकार योग्य नहीं रहता है ।
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> राजगढ जिला चुरू में नोटेरी के रिक्त पद के लिए नई अधिसूचना जारी की जा रही है, जिसके राजपत्र में प्रकाशन के एक माह के अन्दर आप नये प्रपत्र में पुनः नियमानुसार मेमोरियल प्रस्तुत कर सकते है ।"

Thus from the content of the letter which has been quoted above, Annexure-3 sent by the respondent No.1 to all the applicants on 12.12.1997, it was made clear that the applications which have been submitted in pursuance of the notification dated 21.6.1997 never came to be considered on merits and the respondents had taken the decision that since the amended provisions had not been taken into account it is necessary that the application should be filed in the prescribed form appended to the rules (memorial) and the applications had not been filed in the prescribed form liberty was given to all the applicants to submit their applications afresh in the prescribed form. Thus it was not a case of rejection of the application as envisaged under rule 6 but withdrawal of the notification Annexure-1 and calling of fresh applications with liberty to all the

applicants who had submitted their applications to resubmit their applications in accordance with the amended provisions and proforma.

Having considered above and the submission of the learned counsel for the petitioner and the reply filed by the State it is clear that in fact vide Annexure-3 dated 12.12.1997 the applications which have been invited in pursuance of the notification dated 21.6.1997 had not been considered on merits and there was no rejection of the applications on merits. In view of the aforesaid this writ petition as well as the stay application are dismissed.

(DALIP SINGH),J.

Ramchandrkhatri,PS